

REMARKS

Favorable reconsideration and allowance of this application are requested.

I. Summary of Amendments

By way of the amendment instructions above, the specification has been revised so as to clarify the chemical names of the surfactants that were originally listed by tradenames. More specifically, Triton™ X and Tergitol™ surfactants are well known nonionic octylphenol and nonylphenol ethoxylate surfactants, respectively.¹ Similarly, Polysorbates are well known non-ionic surfactants.² Thus, no “new matter” within the purview of 35 USC §132 has been introduced into the specification by way of the amendment instructions above.

The claims have been revised so as to substitute the chemical names for the tradenames. In addition, several claims have been revised so as to be more consistent with Markush terminology.

Claim 1 has been revised so as to emphasize that the present invention preserves “post harvest” produce (see e.g., paragraph [0008] for support) and to emphasize that the surfactants employed in the coating composition is a “nonionic” surfactant (see attached publications regarding the art knowledge that the disclosed Triton™ X, Tergitol™ and Polysorbate surfactants are “nonionic”).

Claim 12 is new and is similar to original claim 1 except that the post harvest produce is required to be coated with a produce-preserving effective amount of the coating composition, and the preferred non-ionic surfactants – i.e., octylphenol

¹ See www.dow.com/surfactants/products/octyl.htm and www.dow.com/surfactants/products/nonylph.htm, copies of which are attached hereto.

² See the attached copy of Non-Ionic Surfactants: Polysorbate 20, Polysorbate 80 and Triton® X100, ESA Biosciences Inc.

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ethoxylates, nonylphenol ethoxylates and polysorbates – are listed as a part of a Markush grouping.

Claims 7-11 directed to a patentably distinct invention non-elected for prosecution have been cancelled. However, cancellation of such claims has been effected without prejudice to the applicants' rights under 35 USC §121.

Therefore, following entry of this amendment, claims 1-6 and 12 will remain pending in this application for which favorable reconsideration and allowance are requested.

II. Response to Specification Objections

The amendments to specification paragraphs [0028]-[0030] above are believed to address the informalities helpfully identified by the Examiner. With regard to the upper weight percent limit of the antimicrobial, applicants note that "0.1% by weight" was recited in originally filed claim 4 (which of course constitutes its own "disclosure").

III. Response to 35 USC §112 Issues

The amendments to the pending claims noted above are believed to address all of the Examiner's criticisms under 35 USC §112, second paragraph. Therefore, pending claims 1-6 and 12 are believed to comply fully with all requirements of 35 USC §112.

IV. Response to Art-Based Issues

Original claims 1-2 attracted a rejection under 35 USC §102(b) as allegedly being anticipated by Scott et al (USP 2,872,325). Applicants suggest that the pending claims herein are not anticipated by Scott et al.

Specifically, Scott et al note that the "...best results are obtained using surface active materials of the **anionic** classification." (column 2, lines 43-45) Thus, contrary to Scott et al, the present applicants have discovered that surfactants of the **nonionic** type are preferred. As such, Scott et al cannot anticipate the present invention as claimed herein.

The comments above are equally germane to the *unobviousness* of the present invention under 35 USC §103(a) over Scott et al in view of Yang et al (USP 6,165,529). Specifically, as the Examiner noted, Yang et al specifically discloses the use of DSS (dioctyl sodium sulfosuccinate) which is a well known anionic surfactant. Lecithin, also a well known **anionic** surfactant,³ is also disclosed at column 3, line 29. Therefore, Yang et al would not lead an ordinarily skilled person to the method of the present invention which employs the **nonionic** surfactants as claimed.

Claim 5 attracted a separate rejection under 35 USC §103(a) based on Bice et al (USP 3,674,510) due to its disclosure of 0.4-2 parts per million of an antifungal compound. Bice et al however does not cure the deficiency of Scott et al as discussed previously. Thus, the combination of Bice et al with Scott et al does not render the present invention as claimed obvious under 35 USC §103(a).

Withdrawal of all art-based rejections is therefore in order.

V. Conclusions

Every effort has been made to advance prosecution of this application to allowance. Therefore, in view of the amendments and remarks above, applicants suggest that all claims are in condition for allowance and Official Notice of the same is solicited.

³ See,
<http://scitation.aip.org/getabs/servlet/GetabsServlet?prog=normal&id=JORHD2000034000007001121000001&idtype=cvips&gifs=yes>

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Should any small matters remain outstanding, the Examiner is encouraged to telephone the Applicants' undersigned attorney so that the same may be resolved without the need for an additional written action and reply.

An early and favorable reply on the merits is awaited.

Respectfully submitted,

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